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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of	)	
Consumers' Long Distance Carriers	)	

AT&T OPPOSITION TO PETITION
FOR LIMITED RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") submits this opposition to the petition of MCI Telecommunications Corporation ("MCI") for reconsideration of the Commission's June 14 Order in this proceeding,[1] insofar as that decision permits interexchange carriers ("IXCs") to combine letters of authorization ("LOAs") with checks payable to prospective long distance customers.[2]

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1 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, FCC 95-225, released June 14, 1995 ("June 14 Order").

2 AT&T does not, however, oppose MCI's request for reconsideration of the June 14 Order's extension of Commission-prescribed verification procedures to "inbound" telemarketing calls. (AT&T and Sprint Communications Company have also petitioned for reconsideration of the inbound verification requirement.) AT&T likewise does not oppose the petitions for clarification or reconsideration filed by Allnet Communications Services, Inc. and Frontier Communications International, Inc. as to other portions of the June 14 Order.

The June 14 Order adopted new rules to protect consumers from unauthorized changes in their primary interexchange carrier ("PIC"), a practice commonly referred to as "slamming." As shown below, the Commission's decision permitting continued use of combined check/LOAs, subject to appropriate disclosures, properly balances the need for consumer protection from slamming against the public interest in preserving vigorous competition in the long distance marketplace. MCI -- which supported combined check/LOAs during the comment cycle in this proceeding -- fails to demonstrate any infirmity in the Commission's decision regarding these instruments, and its reconsideration petition should be denied in that regard.[3]

As part of its efforts in this proceeding to protect long distance customers from confusion or deception regarding carrier selection, the Commission's

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[3] The National Association of Attorneys General ("NAAG") also filed a petition for reconsideration of several aspects of the Commission's Order on August 14 -- three days after the prescribed deadline for such a filing. See 47 U.S.C. § 405; 60 Fed. Reg. 35,846 (July 12, 1995)(publishing notice of June 14 Order). NAAG's petition thus is untimely and the Commission is barred from entertaining that request for relief. See, e.g., Virgin Islands Telephone Corporation (Transmittal No. 6), 7 FCC Rcd 4238 (1992). In all events, the relief which NAAG seeks as to combined check/LOAs should be denied for the same reasons as MCI's petition. NAAG's other proposed subjects for reconsideration were either correctly denied by the Commission in the June 14 Order, or are otherwise beyond the scope of this proceeding.

notice initiating this rulemaking initially proposed to prohibit altogether the combining of LOAs with other forms of promotional inducement, including sweepstakes, contests, and charitable solicitations, as well as checks payable to telephone subscribers.[4] After development of a fuller record on this issue, the Commission in the June 14 Order (¶¶ 21-24) adopted that prohibition as to contests and similar solicitations, based on substantial evidence their form and content are likely to "lead[] to consumer confusion."

However, the Commission also found that the record showed a "limited exception" to this prohibition was warranted for combined check/LOAs, because the evidence demonstrates those instruments have been used by IXCs such as AT&T and MCI "in an appropriate and non-misleading manner, which ha[s] resulted in minimal consumer complaint." Id., ¶ 25. In particular, the Commission pointed out (id.) showings by both AT&T and MCI that their combined check/LOAs "are clear and unambiguous," and that these instruments and their accompanying marketing literature "clearly inform the consumer that signing such a check will result in a PIC change." The Commission also noted (id.) that both AT&T

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4 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Notice of Proposed Rulemaking, 9 FCC Rcd 6885, 6887 (1994)("NPRM")(¶¶ 11-12).

and MCI had shown that their check/LOA programs had not engendered consumer complaints (indicating that these instruments are non-deceptive), and that the Commission's own experience with informal complaints demonstrated that check/LOAs "are seldom the source of actual unauthorized [PIC] conversions." Id., ¶ 26.

Accordingly, the June 14 Order found (¶ 26) that combined check/LOAs that satisfy certain safeguards should be excepted from the general requirement that inducements be physically separate from LOAs. Specifically, such checks may contain only the language prescribed by the Commission's rules to satisfy the requisites of an LOA (which must be placed near the signature line for endorsement), together with information necessary to qualify the check as a negotiable instrument. Inclusion of promotional language or material on the check/LOA is expressly prohibited. Further, the front of the check/LOA must include a notice "in easily readable, bold-face type" stating that endorsing the check will result in a PIC change.[5] The Commission found that these measures would provide consumers "clear notice that they are changing their long distance telephone service" by executing a combined check/LOA.

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[5] June 14 Order, ¶ 26; 47 C.F.R. § 64.1150(d).

MCI now requests the Commission to reconsider and rescind the very provisions sanctioning the use of combined check/LOAs which it had actively supported during the earlier phase of this proceeding.[6] Its petition acknowledges (p. 15) that MCI "has effectively used check inducements," and that "it may seem inappropriate to deny the use of this marketing tool" to acquire new customers. Pet., p. 15. MCI's only explanation for its about-face is the claim that it "is deeply concerned over widespread abuse of 'LOA checks'" by some IXCs, and now "believes that, on balance, the better approach would be to forbid the[] use [of combined check/LOAs] by all carriers." Id.

Whatever the reasons for MCI's abrupt change of position may be, the arguments it cites provide no justification for the Commission to reconsider its carefully crafted rule authorizing the use of combined

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[6] In the comment cycle, MCI urged the Commission to avoid a blanket prohibition on combined check/LOAs and instead to "adopt narrowly-tailored rules directed at specific deceptive business practices" associated with these instruments, contending that "a combined form can be formatted to eliminate customer confusion" from these inducements. See MCI Comments, filed January 9, 1995, pp. 8, 13. See also MCI Reply Comments, filed February 8, 1995, p. 3 ("the goal can be accomplished merely by requiring that [such] documents . . . reasonably inform consumers that LOA execution will result in a PIC change"); Ex parte letter dated February 14, 1995 from Leonard S. Sawicki, MCI, to William F. Caton, FCC (to same effect, and attaching example of MCI check/LOAs).

check/LOAs.[7] For example, MCI erroneously claims (p. 11) that combined check/LOAs "represent a significant portion of the complaints" received by the Commission regarding slamming. In fact, AT&T demonstrated that complaints regarding check/LOAs reportedly accounted for only 47 slamming claims out of 430 informal complaints sampled by the Commission in response to a Freedom of Information Request by AT&T.[8] This evidence clearly supported the June 14 Order's conclusion (¶ 26) that such checks "are seldom the source of actual unauthorized conversions."

MCI also cites (pp. 12-13) published reports that one now-defunct IXC, Sonic Communications, engaged in widespread slamming using check/LOAs which in virtually illegible "very fine, light gray print"

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[7] MCI's petition (pp. 10-11) also refers to purported findings by the Commission in the NPRM concerning the deceptive nature of combined check/LOAs. The statements MCI cites were merely tentative conclusions in a proposal for rulemaking, not final findings by the Commission. The Commission has made clear that such mischaracterization of its decisions "is not acceptable pleading practice." See AT&T Communications (Transmittal Nos. 1555, 1623), 4 FCC Rcd 1412 (1989)(¶ 3).

[8] See Ex parte letter dated June 8, 1995 from Peter H. Jacoby, AT&T, to William F. Caton, FCC, at Exhibit 6 [Letter dated December 30, 1994 from Gregory A. Weiss, FCC, to Peter H. Jacoby, AT&T re: FOIA Control No. 94-400]. AT&T also showed that six of the complaints that the Commission had characterized as related to check/LOAs did not involve checks at all, and that an additional 17 complaints involved slamming through LOAs combined with checks to public payphone premises owners for "dial around" compensation (which was not the focus of this proceeding).

provided disclosure to customers that signing those instruments would authorize a PIC change.[9] MCI ignores the fact that the Commission's revised antislamming rules prohibit such abusive conduct. Specifically, all LOAs (including combined check/LOAs) are required to be printed in fonts "of sufficient size and readable type to be clearly legible."[10] Moreover, check/LOAs must also contain a notice to customers that signing those instruments will result in a PIC change "in easily readable, bold-face type on the front of the check."[11] MCI's petition does not even attempt to demonstrate that the Commission's prescribed procedures are insufficient to protect long distance customers from the misconduct it describes.

At bottom, MCI's reconsideration petition proceeds from the erroneous premise that all IXCs should be precluded from using non-deceptive check/LOAs for

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[9] Additionally, MCI notes published reports of slamming experienced by one public payphone premises owner after endorsing purported dial around commission checks. MCI provides no evidence that the checks in question contained the disclosures required by the Commission's rules for a valid LOA. In all events, moreover, such anecdotal reports of isolated events provide little, if any, basis for reasoned agency decisionmaking.

[10] See 47 C.F.R. § 64.1150(e). The June 14 Order (n.56) makes clear that "checks that are used as LOAs must satisfy all requirements applicable to LOAs" (emphasis supplied).

[11] See 47 C.F.R. § 64.1150(d).

legitimate marketing purposes, simply because some unethical carriers may employ such documents (albeit without Commission-prescribed disclosures) to mislead long distance customers. Such undifferentiated prohibitions of pro-consumer marketing practices have no place in sound regulatory policy, as the June 14 Order recognized.[12] There, the Commission pointed out (¶ 25) that "[a]lthough some IXCs have used checks to mislead and deceive consumers to change their PICs, we recognize that other IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, [with] minimal consumer complaint[s]." It therefore adopted the "narrowly tailor[ed]" disclosure requirements described above to protect long distance customers from slamming "while recognizing the needs of the industry to market services to consumers." Id., ¶¶ 26, 27. MCI's

12 The Commission's conclusion mirrors that of other federal agencies. For example, the Federal Trade Commission ("FTC") recently conducted a rulemaking to control abusive telemarketing practices. Some rules initially proposed in that proceeding would have precluded business from using telemarketing in non-deceptive ways, simply because some unethical firms had made use of those practices for fraudulent purposes. Accordingly, the FTC revised those proposed rules to remove requirements that "would have had the unintended effect of impairing the effect of legitimate business to engage in telemarketing." See ex parte letter dated June 9, 1995 from Peter H. Jacoby, AT&T, to William F. Caton, FCC, with attachment (FTC Notice of Proposed Rulemaking re: Telemarketing Sales Rule, released May 31, 1995).

reconsideration petition fails to show that the Commission's balancing of interests was incorrect.

WHEREFORE, for the reasons stated above, the Commission should deny MCI's petition insofar as it requests reconsideration of the June 14 Order's determination permitting combined check/LOAs.

Respectfully submitted,

AT&T CORP.

By ______________________
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September 8, 1995

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 8th day of September, 1995, a copy of the foregoing "AT&T Opposition to Petition for Limited Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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